

FILED

08 MAR 24 PM 2:59

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

CP

DEPUTY

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9 Monireh Bozorgi

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 MONIREH BOZORGI

13 Plaintiff

14 v.

15 EMVEST MORTGAGE FUND II, LLC,  
16 AND DOES 1-10

17 Defendants

Case No. '08 CV 0547 JAH CAB

COMPLAINT AND DEMAND FOR  
JURY TRIAL

1. TRUTH IN LENDING ACT &  
HOME OWNERS EQUITY  
PROTECTION ACT VIOLATIONS

2. CALIFORNIA COVERED LOAN  
LAW VIOLATIONS

18 JURISDICTION

- 19
- 20 1. Jurisdiction is conferred on this Court as to claims under the Truth in
- 21 Lending Act ("TILA") and the Home Owners Equity Protection Act
- 22 ("HOEPA") by 15 U.S.C. § 1640(e) and 28 U.S.C. § 1331. This Court has
- 23 supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28
- 24 U.S.C. § 1367.

25

26 **PLAINTIFFS HEREIN ALLEGE THAT:**

27

28 PARTIES

- 1
- 2 2. The Plaintiff, Monireh Bozorgi, (hereafter "Plaintiff") is a natural person, and
- 3 is, and at all times relevant was, residing at 11892 Meajean Place, San Diego,
- 4 CA 92129. (hereafter "the property")
- 5 3. Defendant Emvest Mortgage Fund II, LLC (hereafter "Emvest"), is and at all
- 6 times relevant was a California LLC organized and existing under the laws of
- 7 California, with a principal place of business at 591 Camino De La Reina Ste
- 8 928, San Diego, CA 92108 .
- 9 4. Plaintiffs believe and thereon allege that at all times relevant hereto,
- 10 Defendants, in the ordinary course of business, regularly extended or offered
- 11 to extend consumer credit for which a finance charge is or may be imposed or
- 12 which, by written agreement, is payable in more than four installments, and
- 13 thus Defendants are Creditors for purposes of the Truth In Lending Act, 15
- 14 U.S.C. 1602(f).
- 15 5. At all times herein mentioned each Defendant was the agent or employee of
- 16 each and all of the other Defendants and was acting within the course and
- 17 scope of such agency or employment.
- 18 6. That the true names or capacities, whether individual, corporate, associate, or
- 19 otherwise of Defendants, DOES 1 through 10, inclusive, are unknown to
- 20 Plaintiffs, who therefore sue said Defendants by such fictitious names and
- 21 capacities and will amend this Complaint to show their true names and
- 22 capacities when the same have been ascertained.

23

24 **FACTUAL ALLEGATIONS**

25

- 26 7. On or about May 17, 2006, Plaintiff signed a mortgage with Emvest: a five
- 27 year interest only note for \$70,000.00 at 15% interest with closing costs of
- 28 \$11,586.31.

- 1 8. Emvest provided Plaintiff with HOEPA disclosures on May 17, 2006, the day  
2 of the loan signing. The APR indicated on the disclosures was 20.24%.
- 3 9. The mortgage terms included a balloon payment at the end of a 5 year term,  
4 and the disclosures required by the California Covered Loan Law were not  
5 made.
- 6 10. At the loan signing, Plaintiff was not given copies of her "Notice of Right to  
7 Cancel" forms, the rescission notice required under TILA under 12 C.F.R. §  
8 226.23.
- 9 11. On or about March 12, 2008, Plaintiff sent Emvest a letter demanding  
10 rescission pursuant to TILA. Emvest did not rescind the mortgage within 20  
11 days as required under TILA.

### 12 FIRST CAUSE OF ACTION

#### 13 **Against all Defendants, for Violations under TILA & HOEPA**

- 14 12. Plaintiffs reallege and incorporate herein by reference each and every  
15 allegation set forth in paragraphs 1 through 11.
- 16 13. The rescission notices required by 12 C.F.R. § 226.23 were not provided by  
17 Emvest to Plaintiff. Failure to do so extends the Plaintiffs' right of rescission  
18 for up to three years, instead of ending after three days.
- 19 14. Plaintiffs believe and thereon allege that this loan transaction was subject to  
20 the borrower's extended right of rescission as described by 15 U.S.C. § 1635  
21 and 12 C.F.R. § 226.23.
- 22 15. Plaintiffs are able to tender for purposes of rescission under TILA.
- 23 16. More than twenty days passed following Plaintiffs' rescission notice, and  
24 Emvest refused to rescind the mortgage.
- 25 17. This mortgage is subject to HOEPA because the APR exceeds by more than  
26 ten (10) percentage points the yield on Treasury securities having comparable  
27 periods of maturity on the 15th day of the month immediately preceding the  
28

1 month in which the application for the extension of credit is received by the  
2 creditor, and because the total points and fees payable by the consumer at or  
3 before closing exceeded 8 percent of the total loan amount.

4 18. The HOEPA disclosures required by 15 U.S.C. § 1639(a) must be provided  
5 not less than three business days prior to the loan signing. Plaintiff was not  
6 provided with these disclosures until May 17, 2006, at the loan signing.

7 19. Under 15 U.S.C. § 1640(a) any creditor who fails to comply with any  
8 requirement under TILA and HOEPA is liable for actual damages, the sum of  
9 all finance charges and fees paid by the consumer, and costs, and attorney's  
10 fees.

## 11 12 **SECOND CAUSE OF ACTION**

### 13 **Against all Defendants, for Violations under California Financial Code § 4970**

14 20. Plaintiffs reallege and incorporate herein by reference each and every  
15 allegation set forth in paragraphs 1 through 11.

16 21. This mortgage is subject to California Financial Code § 4970 because the  
17 APR exceeds by more than eight (8) percentage points the yield on Treasury  
18 securities having comparable periods of maturity on the 15th day of the  
19 month immediately preceding the month in which the application for the  
20 extension of credit is received by the creditor, and because the total points  
21 and fees payable by the consumer at or before closing exceeded 6 percent of  
22 the total loan amount.

23 22. California Covered Loan Law forbids balloon payments for loans with a  
24 term of five years or less. This mortgage has a term of five years, ending with  
25 a balloon payment, therefore it violates Cal. Fin. Code § 4973(b)(1).

26 23. The California Covered Loan Law disclosure was not made, in violation of  
27 Cal. Fin. Code § 4973(k).

28 24. Defendants' conduct was malicious and oppressive in that it was despicable

1       subjecting Plaintiff to the loss of her home in willful and conscious disregard  
2       to her rights under state and federal law.

3  
4       **WHEREFORE PLAINTIFFS PRAY JUDGMENT AS FOLLOWS:**

5       **FOR THE FIRST CAUSE OF ACTION, 15 U.S.C. § 1640:**

- 6       A. Rescission of the transaction, including a declaration that Plaintiff is not  
7       liable for any finance charges or other charges imposed by Defendants and  
8       third parties;
- 9       B. A declaration that the security interest in Plaintiff's property created under  
10      the transaction is void, and an order requiring Defendants to release such  
11      security interest;
- 12      C. Return of any money or property given by Plaintiff to anyone, including  
13      Defendants, in connection with the transaction;
- 14      D. Statutory damages of \$2,000 per violation as determined at trial.
- 15      E. An order that Plaintiff has no duty to tender the loan proceeds to Defendants,  
16      but in the alternative, if tender is required, a determination of the amount of  
17      the tender obligation in light of all of the Plaintiff's claims, and an order  
18      requiring the Defendants to accept tender on reasonable terms and over a  
19      reasonable period of time;
- 20      F. Enjoin Defendants during the pendency of this action, and permanently  
21      thereafter, from instituting, prosecuting, or maintaining foreclosure  
22      proceedings on the Plaintiffs' property, and/or reporting any negative  
23      information to Plaintiffs' credit;
- 24      G. The sum of all finance charges paid by Plaintiff;
- 25      H. Actual damages in an amount to be determined at trial; and
- 26      I. An award of reasonable attorney's fees and costs, pursuant to 15 U.S.C. §  
27      1640(a)(3);

28      **FOR THE SECOND CAUSE OF ACTION, Cal. Fin. Code § 4978:**

1 J. The greater of \$15,000 in statutory damages or actual damages in an amount  
2 to be determined at trial;

3 K. Punitive damages; and

4 L. An award of reasonable attorney's fees and costs;

5 FOR ALL CAUSES OF ACTION

6 M. For costs of suit; and

7 N. For such other and further relief as the court may deem proper.

8 A JURY TRIAL IS DEMANDED.

9  
10 Dated: March 17, 2008

By: 

Matthew Tye  
Attorney for Plaintiff

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 149045 - SH**

**March 24, 2008  
15:01:14**

**Civ Fil Non-Pris**

USAO #: 08CV0547

Judge.: JOHN A HOUSTON

Amount.: \$350.00 CK

Check#: BC210926

**Total-> \$350.00**

**FROM: BOZORGI V. EMVEST MORTGAGE**



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
CIVIL COVER SHEET

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )  MONIREH BOZORGI	<b>DEFENDANTS</b> EMVEST MORTGAGE FUND II, LLC, AND DOES 1-10 <div style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">08 MAR 24 PM 2:58</div> County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): San Diego
<b>(b)</b> County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): San Diego	County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases Only): San Diego
<b>(c)</b> Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) FRANSEN AND MOLINARO, LLP 1101 California Avenue, Suite 102 Corona, CA 92881	Attorneys (If Known) Unknown <div style="text-align: center; font-size: 1.5em; font-weight: bold;">DEPUTY</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">'08 CV U547 JAH CAB</div>

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

☒ 1 Original Proceeding   
 ☐ 2 Removed from State Court   
 ☐ 3 Remanded from Appellate Court   
 ☐ 4 Reinstated or Reopened   
 ☐ 5 Transferred from another district (specify):   
 ☐ 6 Multi-District Litigation   
 ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes    ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:** ☐ Yes    ☒ No    **MONEY DEMANDED IN COMPLAINT: \$** Approx. \$200,000.00

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. § 1601 et seq. and Cal. Fin. Code § 4978, for violations of the Truth in Lending Act and the Real Estate Settlement Procedures Act.

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed? ☒ No    ☐ Yes

If yes, list case number(s):

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_

CR 149045 #350 3/24/08

**ORIGINAL**



JL. SOUTHERN  
**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**VIII(b). RELATED CASES:** Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

MONIREH BOZORGI - SAN DIEGO

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

EMVEST MORTGAGE FUND II, LLC - SAN DIEGO

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

**Note:** In land condemnation cases, use the location of the tract of land involved.

ALL CLAIMS - SAN DIEGO

**X. SIGNATURE OF ATTORNEY (OR PRO PER):** \_\_\_\_\_

Date March 17, 2008

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))